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**(1981) 10 KAR CK 0024**  
**In the Karnataka High Court**  
**Case No : WP 6240/18**

Shamanna R.

APPELLANT

Vs

State Bank of Mysore

RESPONDENT

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**Date of Decision :** 16-10-1981

**Acts Referred:**

State Bank of India (Subsidiary Banks) Act, 1959 — Section 24

**Citation :** (1982) 1 KarLJ 265

**Hon'ble Judges :** M. Rama Jois, J

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### Judgement

1. The petitioner, a former officer of the State Bank of Mysore, has presented this Writ Petition praying for quashing the order made by the management of the Bank dismissing him from service.

2. Briefly, the facts as stated in the petition are as follows:

(i) The petitioner joined service in the erstwhile Bank of Mysore as a Clerk in June 1948. On the promulgation of the State Bank of India (Subsidiary Banks) Act, 1959, the Bank of Mysore, became State Bank of Mysore. In the year 1963 he was posted as Manager and he worked at different places. After the nationalisation of the fourteen major Banks, the petitioner implemented the policy of taking the finances to the doors of the farmers" effectively. In respect of the enormous work done by him as manager, the petitioner received encomiums at frequent intervals. One such letter received by the petitioner from the General Manager was dated 5-9-1969 (Annexure-A). By letter dated 28-3-1972 (Annexure-B), the petitioner was called upon to explain certain lapses and irregularities pointed out in the audit report conducted earlier. The petitioner asked for a copy of the report for furnishing the reply. Without furnishing the report, the petitioner was placed under suspension with effect from 26-5-1972. Two years thereafter on 2-3-1974 a notice was issued to the petitioner calling upon him to show cause as to why disciplinary proceedings should not be instituted in respect of certain alleged irregularities (vide Annexure-E). The petitioner submitted his reply on 15-4-1979 (vide Annexure-E1).

(ii) In the meanwhile, a criminal case was instituted against the petitioner and two others under the provisions of the Prevention of Corruption Act, before the Special Judge, Bangalore, on the charge that the petitioner had misappropriated a sum of Rs. 1,500 out of the funds of the State Bank of Mysore, Kudligi Branch. The Special Judge, by his order dated 30-11-1974 (Annexure-G) honourably acquitted the petitioner of the charge alleged against him.

(iii) After the petitioner was acquitted, one year and seven months thereafter, a departmental enquiry was commenced against the petitioner, A charge memo dated 9 5-1975 was issued. It reads as follows: x x x x

2) It has, therefore, been decided to take disciplinary action against you and conduct an enquiry into several acts of omissions and commissions made by you during your tenure as Branch Manager at our Kudligi Branch.

3) Accordingly, you are hereby charged of having committed several serious irregularities amounting to "gross misconduct" specified under: I to XIII.

x x x x

4) Sri M. Veerabhadra Swamy is appointed as the Enquiry Officer to enquire into the forgoing charges. It is decided to hold the enquiry at Kudligi on 26th May, 1975 at 8-00 a.m. You are requested to be present at the aforesaid time and date before the Enquiry Officer failing which the enquiry will be conducted in your absence.

5) You are eligible to produce witnesses and/or records and to examine or cross examine the Bank's witnesses to defend yourself in these proceedings.

6) It will also be in order for you to be defended by a representative of the Officer's Association of which you are a member.

7) Please acknowledge receipt,

Yours faithfully,

Sd/- M.V. Muni Raju,

Charge Sheetting Authority." After the inquiry commenced, the petitioner was represented in the first instance by the Secretary of the Officers' Association one K.N. Narasimha Murthy, but under certain circumstances beyond the control of the petitioner, he was deprived of the assistance of the said Narasimha Murthy and during the rest of the period, the petitioner had to defend himself though he was not able to do so.

(iv) In the course of the enquiry, the petitioner requested for copies of certain documents which were required for his defence as per his letter dated 13-4-1976 (Annexure-H). In spite of his subsequent letters (Annexures H-1 to H-6), only a few documents were furnished and as regards others, the Enquiry Officer rejected the same stating that they were not relevant, without assigning any reason.

(v) The petitioner had submitted a list of persons, who were all officers of the Bank, whom the petitioner wanted to examine as defence witnesses (vide Annexure-J). No steps were taken by the Bank to issue notices to the said officers to attend the enquiry and to give evidence and the petitioner was asked to produce them himself which he could not do as they were all officers of the Bank.

(vi) After the conclusion of the enquiry, a notice dated 22-9-1977 (Annexure-P) was issued to the petitioner stating that out of 13 charges framed against the petitioner, the first 10 were held to have been proved by the Enquiry Officer and the management-bank wanted to impose the penalty of dismissal from service. The petitioner was called upon to submit his reply to the show cause notice. A copy of the enquiry report was not furnished to the petitioner. The petitioner submitted his reply dated 29-10-1977 (Annexure-Q) stating that there was no evidence to find him guilty and in any event having regard to his excellent service records in the past, the dismissal was not justified. Thereafter the Bank proceeded to pass the order dated 8-12-1977 (Annexure-R) imposing the penalty of dismissal from service against the petitioner.

After the petitioner was dismissed from service in connection with the presentation of the appeal against the said order, the petitioner addressed a letter dated 24-12-1977 (Annexure-S) asking for a true copy of the rules or standing orders which governed the disciplinary enquiries and also to inform him as to who was the appellate authority. In reply to the said letter, the Managing Director wrote a letter dated 27-1-1978 (Annexure-T) enclosing thereto a copy of the relevant portions of the Bipartite Settlement reached between the management of the bank and its workmen, stating that those rules were also being applied in conducting the disciplinary proceedings against the supervisory staff. The Managing Director also informed that there was no appellate authority specified, but, however, if an appeal was received, it would be placed before the executive committee for consideration. It is only after the receipt of the letter, the petitioner came to know that the disciplinary proceedings were being conducted under the rules enclosed to Annexure-T and that there has been infraction of the said rules in holding the disciplinary proceedings against the petitioner. Thereafter aggrieved by the order of dismissal made against him, the petitioner presented this writ petition.

3. Sri H.R. Venkataramanaiah, learned counsel appearing for the petitioner, submitted that the impugned order had been made in violation of the principles of natural justice and the rules governing the disciplinary proceedings and, therefore, liable to be quashed. He urged the following grounds in support of his submission:

(i) A copy of the audit report of one Laxmana Rao, which was the cause for initiation of the disciplinary enquiry was not furnished.

(ii) The documents required for the defence of the petitioner were not furnished.

(iii) The witnesses whom the petitioner wanted to examine in his defence, were not summoned though they were officers of the bank working at different places.

(iv) The finding recorded was perverse and based on no evidence.

(v) The petitioner was denied the opportunity of taking the assistance of a lawyer to defend him as the rules governing disciplinary proceedings were not made known before holding the enquiry.

(vi) The report of the Enquiry Officer was not furnished when the petitioner was called upon to show cause against the proposed penalty.

(vii) The final order not being a speaking order, is invalid.

4. Statement of objection has been filed by the respondent-bank. Sri G.V. Shantharaju, learned counsel appearing for the bank submitted in reply to the seven grounds as follows:

(i) Copies of all the documents on the basis of which the charges framed against the petitioner were sought to be proved, had been given to the petitioner and the copy of the audit report made by Lakshman Rao was not a document on which the charges were sought to be proved and it was not even referred to in the enquiry report and, therefore, non-furnishing of the same did not result in violation of the rules or principles of natural justice.

(ii) As regards the defence documents, out of the various documents asked for by the petitioner, the Enquiry Officer had furnished copies of all the relevant documents and as regards the rest, the Enquiry Officer was of the opinion that they were not relevant to the charges framed against the petitioner and, therefore, the petitioner could not make any complaint on this ground.

(iii) As far as the defence witnesses were concerned, after the petitioner furnished the names of witnesses, the bank informed the petitioner that it was up to him to secure them. He further submitted that the petitioner did not produce the willingness of those officers to give evidence and did not further insist on the summoning of those witnesses and, therefore, neither the Enquiry Officer nor the bank could be blamed for the petitioner's failure to secure the defence witnesses.

(iv) The finding recorded by the Enquiry Officer was based on evidence. He came to the conclusion that out of 13 charges framed against the petitioner, the first 10 were established and the last 3 were not established. The said findings based on evidence on record are not open for interference in a petition under Art. 226 of the Constitution.

(v) It was for the petitioner to have made a request for permitting him to take the assistance of a lawyer to defend himself and as he made no such request, he cannot complain that he was denied the opportunity of the assistance of a lawyer.

(vi) Neither the rules of natural justice required that the report of the Enquiry

Officer must be enclosed to the show cause notice proposing the penalty, nor the rules, which had been adopted by the bank, made such requirement mandatory and, therefore, non-furnishing of the report of the Enquiry Officer was no ground to hold that the final order made by the bank was illegal.

(vii) As in the reply furnished by the petitioner to the show cause notice he did not make out any point worth consideration, the petitioner could not complain that the final order was not a speaking order.

5. I shall take up ground (vi) for consideration in the first instance. Learned counsel for the petitioner strenuously contended that the furnishing of a copy of the Enquiry Officer's report before the imposition of the penalty along with the show cause notice was absolutely essential and without the same, it was impossible for the petitioner to submit an effective reply. He submitted that the non furnishing of the Enquiry Officer's report was a clear breach of the principles of natural justice and also a violation of the rules which specifically provided for affording an opportunity of hearing as regards the nature of proposed punishment.

6. (1) In support of the submission that non-furnishing of the Enquiry Officer's report was a violation of the principles of natural justice, learned counsel for the petitioner relied on the decision of the Supreme Court in *State of Gujarat v. V.R.G. Teredesai*, AIR 1969 SC 1294 and two decisions of this Court in *Ruplanaik v. State of Mysore*, SLR 1971 Mys. 529 and *Nanjundeshawar v. State of Mysore*, 1960 Mys. L.J. 79.

(2) Learned counsel for the bank submitted that in a case where the delinquent officer had fully participated in the inquiry, the giving of the show cause notice enclosing thereto the Enquiry Officer's report, was not at all necessary and such a procedure was not part of the well accepted rules of natural justice in the matter of holding disciplinary proceedings. In support of the above submission, the learned counsel for the bank relied on the following decisions: *S.S. Rly. Co. v. Workers' Union*, AIR 1969 SC 513, *Azizal Haque v. State of U.P.*, 1971 (3) SCC 796, *M.S. Tannery & Footwear Corpn. of India v. State of U.P.*, 1979 L & I Cases 1434, *Narayan v. Dy. General Manager, BTS*, 1978 (2) Kar. L.J. 318 and *Kartik Chandra Datta v. Dist. Traffic Supdt.*, AIR 1957 Pat. 676 at 677. In all these decisions, the learned counsel pointed out, that it had been clearly held that in the absence of a mandatory rule requiring the giving of a show cause notice along with the enquiry Officer's report, no such notice was necessary and that the rules of natural justice did not require the furnishing of a copy of the Enquiry report and asking the concerned delinquent employee to submit his reply.

7. The substance of all the decisions on which the learned counsel for the bank relied undoubtedly is that the giving of a second show cause notice regarding penalty proposed enclosing thereto a report of the Enquiry Officer is not at all a requirement of the rules of natural justice. Therefore there can be no doubt that unless the petitioner is able to show that there was a rule which required the

respondent-bank to issue a show cause notice along with the report of the Enquiry Officer and to hear him before the imposition of any penalty, the ground urged for the petitioner that the final order was liable to be quashed on the ground that the Enquiry Officer's report was not given to him along with the show cause notice cannot be upheld.

8. Learned counsel for the petitioner submitted that rule 19(12)(a) of the rules which governed the inquiry proceedings specifically provided for giving a hearing to the delinquent officer before imposing any penalty on the basis of the report of the Enquiry Officer and this mandatory rule included the requirement to give a show cause notice along with the Enquiry Report and the violation of it renders the impugned order invalid.

9. As against this learned counsel for the bank submitted that the rules governing the disciplinary proceedings of workmen as defined in the Industrial Disputes Act, who were in the service of the bank, was being followed in respect of officers also and no statutory rules have been framed and, therefore, even if the rule had been violated, it did not furnish any valid ground for setting aside the impugned order. In the alternative, he submitted that the rules also did not require the furnishing of the Enquiry Officer's report and according to the rules it was to be furnished if only the petitioner had asked for it.

10. The first question, therefore, which requires consideration is, whether the rules which governed the disciplinary proceedings have statutory force. The letter dated 27-1-1978 written by the Managing Director to the petitioner enclosing thereto a copy of the rules which governed the disciplinary proceedings against the supervisory staff reads as follows:

"Dear Sir,

Please refer to your letter dated 24th December, 1977.

2) In the absence of specific rules of service for the supervising staff in the Bank, the provisions laid down in Chapter 19 of the Bipartite Settlement (Clause 19-1 to 19-12) with slight modifications, are being applied in conducting disciplinary proceedings against the supervising staff.

3) The Executive Committee of the Board of Directors is the disciplinary authority for the members of the supervising staff. No authority has been specified to hear appeals against the order passed by the disciplinary authority. If any appeal is received, it is examined in detail and if there are grounds justifying a review, it will be put up to the Executive Committee for consideration. Extracts of Clauses 19-1 to 19-12 of the Bipartite Settlement are enclosed for your information.

Yours faithfully,

Sd/- Managing Director."

The relevant portions of the rules read as follows:

"19-1. In supersession of paragraphs 18-20, 18-24 and 18-28 of the Desai Award, a person against whom disciplinary action is proposed or likely to be taken shall, in the first instance, be informed of the particulars of the charge against him and he shall have a proper opportunity to give his explanation as to such particulars. Final orders shall be passed after due consideration of all the relevant facts and circumstances. With this object in view, the following shall apply.

x x x x

19-6. An employee found guilty of gross misconduct may:

(a) be dismissed without notice; or (b) be warned or censured, or have an adverse remark made against him; or (c) be fined; or (d) have his increment stopped; or (e) have his misconduct condoned and be merely discharged.

x x x x

19-10. In all cases in which action under clauses 19-4, 19-6 or 19-8 may be taken, the proceedings held shall be entered in a book kept specially for the purpose, in which the date on which the proceedings are held, the name of the employee proceeded against, the charge or charges, the evidence on which they are based, the explanation and the evidence, if any, tendered, by the said employee, the finding or findings, with the grounds on which they are based and the order passed shall be recorded with sufficient fullness, as clearly as possible and such record of the proceedings shall be signed by the officer who holds them, after which a copy of such record shall be furnished to the employee concerned if so required by him in writing.

19-11. When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof.

19-12. The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and given his explanation, so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended- (i)(x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representation of a registered trade union of employees of the bank in which he is employed; or (ii) at the request of the said

union by a representative of the state federation or all India Organisation to which such union is affiliated; or (iii) with the Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

x x x x (c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any of the employee and any other aggravating or extenuating circumstances, that may exist". (Underlined (italics) by me)

The erstwhile Bank of Mysore came to be established as a subsidiary Bank of the State Bank of India under the provisions of State Bank of India (Subsidiary Banks) Act, 1959. The provisions of the Act, which are relevant for the purpose of this case are:

"24.(1) The State Bank may, from time to time, give directions and instructions to a subsidiary bank in regard to any of its affairs and business, and that bank shall be bound to comply with the directions and instructions so given.

(2) Subject to any such directions and instructions, the general superintendence and conduct of the affairs and business of a subsidiary bank shall, as from the appointed day, vest in a Board of Directors who may, with the assistance of the general manager, exercise all powers and do all such acts and things as may be exercised or done by that bank.

x x x x

50. (1) A subsidiary bank may, subject to such limitations and conditions as may be prescribed, appoint such number of officers, advisers and employees as it considers necessary or desirable, for the efficient performance of its functions and on such terms and conditions as it may deem fit.

63. (i) The State Bank may, with the approval of the Reserve Bank, make in respect of a subsidiary bank regulations, not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for- x x x x

x x x x (m) the conditions and limitations subject to which the subsidiary bank may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service". (Underlined (italics) by me)

Sub-section (1) of S. 24 confers power on the State Bank to give directions and instructions to the subsidiary banks and the latter are required to comply with those directions. Sub-section (2) of S. 24, subject to any directions issued by the State Bank under sub-section (1) thereof, vests in the Board of Directors of a subsidiary bank full powers of management including the power, to do all such acts and things as may be exercised or done by that bank. Sub-section (1) of S.



50 confers power on the subsidiary bank to appoint such number of officers, advisers and employees as it considers necessary for the efficient performance of its functions and on such terms and conditions as it may deem fit and this is only subject to such limitations and conditions as may be prescribed. S. 63(2)(m) empowers the State Bank to make regulations laying down the conditions and limitations subject to which a subsidiary bank might appoint officers, advisers and other employees fixing their remuneration and other terms and conditions of service. Admittedly no such regulations had been framed by the State Bank in exercise of its powers under Sec. 63(2)(m) of the Act. Therefore it was competent for the respondent subsidiary bank to lay down terms and conditions of service of its officers and employees in exercise of its powers under S. 24 read with sub-section (1) of S. 50 of the Act. The letter of the Managing Director clearly indicates that the management of the State Bank of Mysore had adopted the rules which governed the disciplinary proceedings of employees of the bank, who were workmen as defined in the Industrial Disputes Act, to govern the disciplinary proceedings against the officers of the bank, to which category the petitioner belonged. Therefore, the rules enclosed to Annexure-T have statutory force. Even on the basis that the above rules applicable to workmen have been adopted pending framing of rules regulating the conditions of service of officers, the said rules have statutory force and efficacy. (See: *Union of India v. K.P. Joseph*, AIR 1973 SC 303 and *Mrithyunjaya v. T.M.C. Shiralkoppa*, 1973 (1) Mys. L.J. 470. Further having regard to the provisions of clause (1) of Art. 16 of the Constitution also, any rules laid down regulating the conditions of service of its employees by an authority which falls within the definition of the word "State" as defined in Art. 12 of the Constitution would be enforceable, as such authority is bound to conform to those rules in respect of all the employees, as otherwise it would amount to an infringement of the right to equality guaranteed under Arts. 14 and 16(1). For these reasons, I hold that the rules which regulated the disciplinary proceedings, a copy of which was enclosed to the letter of the Managing Director dated 27-1-1978 (Annexure-T), have statutory force.

11. The next question for consideration is whether under the rules the furnishing of the Enquiry Officer's report was mandatory. The relevant portion of rule 19-12 extracted earlier specifically provides that the delinquent officer shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him. Learned counsel for the bank submitted that the said rule did not specifically require the furnishing of the copy of the enquiry report along with the show cause notice and, therefore, it cannot be said that the rule has been violated. He also submitted that even on the basis that the rule required the furnishing of the Enquiry Officer's report, the petitioner should have asked for the same after the show cause notice was issued if he considered that the report of the Enquiry Officer was essential for giving his reply to the show cause notice and as he failed to do so, he cannot be heard to complain that the copy of the report of the enquiry was not given to him. Further, relying on rule 19-10 of the rules, learned counsel for the bank argued that the bank was

required to furnish a copy of the enquiry report if only the petitioner requested for the same in writing and as he had not done so, he cannot be heard to contend that there was any violation of the rules.

12. Learned counsel for the petitioner however, contended that the rule which required the giving of hearing as regards the nature of the proposed punishment clearly meant that the Enquiry Officer's report must be furnished along with the show cause notice as without it, an effective hearing was impossible. As regards rule 19-10, he submitted that it did not relate to the furnishing of a copy of the enquiry report only, but it was a general rule requiring the management to furnish copies of all the records pertaining to the enquiry, such as, copies of depositions, copies of documents produced in the enquiry, the order sheet of the Enquiry Officer find also the copy of the enquiry report and the rule was in the nature of enabling the concerned officer to take copies of documents required by him and had nothing to do with the rule which required the management to hear the delinquent officer before imposing the penalty.

13. As noted earlier, the last part of rule 19-12 specifically requires that the disciplinary authority should hear the delinquent officer regarding the nature of the proposed punishment after the charge was established. In my view the last part of rule 19-12 which requires the disciplinary authority to hear the delinquent officer after the charges are established against him is a rule which is of great substance. The hearing contemplated by the said rule is an effective hearing and that is possible only if a copy of the Enquiry Officer's report is furnished to the delinquent officer and he is called upon to furnish his reply as against the imposition of any penalty which the disciplinary authority had proposed to impose. In the present case, the show cause notice issued by the Managing Director after the receipt of the enquiry records reads as follows:

"Please refer to our charge sheet No. Estt/1776 dated 9th May 1975 and the subsequent enquiry conducted at our Kudligi Branch and Head Office.

2) After having considered the entire record of the disciplinary proceedings and also your explanation and submission, the Executive Committee, at its meeting held on the 17th October 1977, found you guilty of the first 10 charges out of the 13 charges enumerated in the charge sheet cited above. Having considered all aspects of the case, the Executive Committee resolved to impose on you the punishment of dismissal with immediate effect.

3) Please show cause, within 7 days from the date of receipt of this letter, why the said punishment should not be awarded to you. Please note that, if you fail to send your reply within the stipulated period, further action will be taken without any reference to you."

The show cause notice does not furnish even the substance of the Enquiry Officer's report and his findings. Therefore, the compliance to the rule which required the hearing of the delinquent officer before the imposition of the penalty was rendered impossible, as neither the copy of the Enquiry Officer's report was

furnished nor its substance was made part of the show cause notice. Even so, learned counsel for the bank submitted that it was for the petitioner to have asked for the copy of the enquiry report and he having failed to do so, cannot now contend that he was prejudiced by the non-furnishing of the enquiry report. In support of his submission he placed reliance on the decision of the Supreme Court in *State of U.P. v. Om Prakash Gupta*, AIR 1970 SC 679 at 683. In particular he relied on the following observation- "... Further it was open to the respondent to ask for a copy of that report when he was asked in 1949 to show cause against the proposal to dismiss him. He did not do so nor did he object to the notice calling upon him to show cause why he should not be dismissed, on the ground that he had not been supplied with a copy of the report made by the Enquiry Officer."

Relying on the above observation, learned counsel for the bank submitted that in the present case also the petitioner not having objected to the show cause notice on the ground that the report of the Enquiry Officer was not furnished, and also not having asked for a copy of the same, cannot complain that the rule in question, was not complied with.

14. The above observation read independently supports the contention urged for the bank. But when read with the earlier portion of the judgment in the same paragraph clearly indicates that, that observation was made on the facts of the said case and the decision does not support the contention urged for the Bank to the effect that even when a mandatory provision of law required the giving of a show cause notice along with a report of the Enquiry Officer before imposing the penalty, non giving of Enquiry Officer's report would not vitiate the final order, unless it was asked for by the delinquent official. The earlier part of the judgment reads as follows:

" .... The High Court was not right in its conclusion that the report of the Enquiry Officer had not been made available to the respondent before he was called upon to show cause against the proposed punishment. A summary of that report had been given to him when he asked for it for the purpose of submitting a memorial to the Government against the order made in 1944 dismissing him from service. It is not shown that that summary did not contain all the relevant facts and circumstances taken into consideration as well as the conclusions reached by the Enquiry Officer and the recommendations made by him."

Learned Counsel for the respondent relied on the decision of the Allahabad High Court in *Ranbir Singh v. Superintendent, Small Arms Factory*, AIR 1957 All 574 and contended that as at the second stage, the petitioner was only entitled to have his say regarding the penalty and not regarding the findings recorded by the Enquiry Officer, furnishing of Enquiry Officer's report was not at all essential. The above judgment was rendered while interpreting the provisions of Art. 311(2) of the Constitution. The Allahabad High Court construed the said article and held that as at the second stage, the delinquent official was required to have his say only regarding the quantum of penalty and not regarding the findings

recorded in the enquiry, the giving of a second show cause notice along with a copy of the enquiry report was not at all necessary. The said view cannot at all be considered as having laid down the correct position of law. This is evident from the judgment of the Supreme Court in the case of *State of Assam v. Bimal Kumar Pandit*, AIR 1963 SC 1612. Explaining the scope of the second opportunity contemplated by Art. 311(2) of the Constitution, the Supreme Court stated as follows:

" ... In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice, the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or the correctness of the findings recorded by the Enquiring Officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute". (*Underlined (italics) by me*).

Therefore it is clear, whenever a second and final show cause notice is required to be given under any statutory provision, before the imposition of penalty, the delinquent employee to whom such notice is issued, is entitled to say that the finding recorded is not based or justified on the evidence on record and that in any event the punishment proposed was excessive. In the case of *State of Gujarat v. R.G. Teredesai*, AIR 1969 SC 1294, the Supreme Court considered the above question and held that the furnishing of Enquiry Officer's report along with the show cause notice was mandatory and this was reiterated in the case of *U.P. Government v. Sabir Hussain*, AIR 1975 SC 2045, while considering the analogous provisions of S. 240(3) of the Government of India Act, 1935. The relevant portion of the judgment reads:

"13. It is to be noted that the section required not only the giving of an opportunity to show cause, but further enjoins that the opportunity should be "reasonable". What then is "reasonable opportunity" within the contemplation of S. 240(3)? How is it distinguished from an opportunity which is not reasonable? The question has to be answered in the context of each case, keeping in view the object of this provision and the fundamental principle of natural justice subserved by it. As pointed out by this Court in *State of Gujarat v. Teredesai* (*supra*), the entire object of supplying a copy of the report of the Enquiring Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly

severe. If the Enquiry Officer had also made recommendations in the matter of punishment, that is likely to affect the mind of the punishing authority even with regard to penalty or punishment to be imposed on such officer. The requirement of reasonable opportunity, therefore would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant. Thus the broad test of "reasonable opportunity" is, whether in the given case, the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage, or in the alternative, to show that the penalty proposed was much too harsh and disproportionate to the nature of the charge established against him". (Underlined (italics) by me)

Applying the above ratio to the present case, it appears to me that as neither the report of the Enquiry Officer nor its substance was furnished to the petitioner, there was a clear disobedience to rule 19-12 of the rules governing the disciplinary proceedings.

15.(1) I am not impressed by the argument addressed by the learned counsel for the bank that in view of rule 19-10, the bank was under an obligation to furnish a copy of the Enquiry report if only the petitioner had asked for it in writing and not otherwise. The wording of the said rule indicates that it is a provision which enables the delinquent official to take copies of all documents pertaining to an inquiry such as copies of depositions, copies of documents marked as exhibits in the inquiry and copies of order sheet including the copy of the enquiry report if he desires to have them and according to the said rule, if an application for a copy is made in writing, the bank is bound to give the same. The above rule has nothing to do with the requirement of hearing prescribed under rule 19-12 (a) of the Rules. The obligation to give a hearing before imposing a penalty under this rule is confined to the furnishing of the inquiry report. After receipt of such notice, if the delinquent official desires to have copies of any other document, to prepare his reply, he could apply for the same under rule 19-10.

(2) It is no doubt true that if a delinquent official had already applied for a copy of the enquiry report under rule 19-10 and the same had already been furnished, it would be sufficient for the disciplinary authority to say in the show cause notice that the copy of the enquiry report is furnished to the delinquent on his request and in such a case, the concerned employee cannot insist that another copy should be furnished along with the show cause notice. In the present case it is not disputed that the petitioner had not applied for a copy of the enquiry report and the same had not been furnished.

(3) In this behalf I must observe that the petitioner was not even aware that he could apply for copies of documents as the fact that the rules such as those enclosed to Annexure-T had been adopted for holding disciplinary proceedings against the officers of the bank, was not at all made known to him. If the bank had furnished a copy of the rules to the petitioner, or at least invited his attention

to Chapter 19 of the Bipartite Settlement (Clause 19(1) to 19(12)) which were being followed in holding the disciplinary proceedings against the officers, the petitioner could have been expected to apply for a copy of the inquiry report. As stated earlier, copy of the rules was furnished after the completion of the inquiry.

(4) In fact the failure on the part of the bank to specifically refer to the rules under which the disciplinary proceedings were being held against the petitioner was itself opposed to justice and fairplay. As stated earlier, one of the grievances of the petitioner has been that he was not even aware that he could make a request for taking the assistance of a lawyer to defend himself. He pointed out to para 6 of the Article of Charges, Annexure-F. It reads:

"6. It will also be in order for you to be defended by a representative of the Officer's Association of which you are a member".

In all fairness, in the charge memo the Enquiry Officer should have set out clauses (i) to (iii) of rule 19-12(a), according to which, permission could be given to an employee to be defended by a representative of an association or by a lawyer. As that was not done, the petitioner did not even know that he could seek the permission of the Enquiry Officer to be defended by a lawyer and for that reason he remained undefended in the enquiry after, for some reason or the other, the employee of the bank who appeared at the earlier stages, did not defend the petitioner in the further proceedings of the case. This circumstance also shows that the petitioner was kept in dark even about the rules which governed the disciplinary proceedings which had been initiated against him.

(5) For the above reasons, I am unable to agree that it was for the petitioner to ask for the copy of the inquiry report and the bank was under no obligation to furnish the same to the petitioner.

16. The seventh ground urged for the petitioner was that the final order not being a speaking order was invalid. In his reply (Annexure-Q) to the show cause notice, the petitioner, who was unable to contest the correctness of the findings recorded by the Enquiry Officer in the absence of the inquiry report, however, regarding the proposed penalty, had referred to his past good record of service and also about his acquittal in the criminal Court and requested the bank not to impose the penalty as proposed. In the final order there is no consideration of even these grounds urged by the petitioner in reply to the show cause notice, except stating that after considering the reply of the petitioner and all aspects of the matter, the committee decided to confirm the, decision of the Enquiry Officer and dismiss the petitioner from bank service. The non-consideration of the grounds urged by the petitioner while passing the final order was also violative of rule 19-12(a) of the rules.

17. Learned counsel for the bank submitted that there was nothing worth stated in the reply to the show cause notice by the petitioner, there was nothing to be considered by the disciplinary authority before passing the final order. In the reply furnished by the petitioner, at least the petitioner had specifically referred

to his past excellent record of service and also about his honourable acquittal in the C.B.I. case before the Court and submitted that the penalty proposed was unjustified. The disciplinary authority ought to have applied its mind to this aspect before taking a final decision regarding the quantum of penalty. That has not been done. Therefore, I am of the view that the seventh ground urged for the petitioner is also well founded.

18. In view of my conclusion on the 6th and 7th grounds urged for the petitioner, I consider it unnecessary to deal with the first five grounds urged for the petitioner as they are matters which are in the first instance required to be considered by the disciplinary authority.

19. For the reasons aforesaid, I make the following order:

(i) Rule made absolute.

(ii) The impugned order of dismissal dated 8-12-1977 (Annexure-R) is quashed.

(iii) The Bank shall be at liberty to issue a fresh show cause notice to the petitioner enclosing thereto a copy of the Enquiry Officer's report and to pass a fresh order after considering the reply, if any, submitted by the petitioner in reply to the show cause notice.

(iv) The petitioner shall be entitled to all consequential benefits flowing from the quashing of the order.

(v) The petitioner shall be entitled to costs. Advocate's fee Rs. 250.